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8   NOT FOR CITATION

9   IN THE UNITED STATES DISTRICT COURT

10   FOR THE NORTHERN DISTRICT OF CALIFORNIA

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12   IVAN VERNORD CLEVELAND,   )   No. C 06-02861 JF (PR)
)
13   Plaintiff,   )   ORDER DIRECTING PLAINTIFF
)   TO EFFECTUATE SERVICE UPON
14   vs.   )   OR PROVIDE COURT WITH
)   LOCATION INFORMATION FOR
15   DR. SUNDARAN,   )   DEFENDANT SUNDARAN
)
16   Defendant.   )
       _____)

17

18   Plaintiff, a California prisoner incarcerated at the California Training Facility

19   in Soledead, ("CTF-Soledad") and proceeding pro se, filed the instant civil rights

20   action pursuant to 42 U.S.C. § 1983 against prison officials. The Court found

21   cognizable Plaintiff's Eighth Amendment claim against Defendant Dr. Sundaran

22   based on his deliberate indifference to Plaintiff's serious medical needs, *i.e.*, his back

23   problems, and dismissed the other claims. On August 21, 2008, the Court directed the

24   clerk to prepare the summons for service of the complaint upon Defendant Sundaran,

25   and the United States Marshal to effectuate such service. The Clerk prepared the

26   summons for service of Dr. Sundaran at CTF-Soledad, where Plaintiff indicated he

27   was located. On September 24, 2008, the Marshal returned the summons unexecuted,

28   noting that "No record of Dr. Sundaran. Facility will not accept service." (See

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1 Docket No. 8.) Accordingly, Defendant has not been served.

2 In cases wherein the Plaintiff proceeds in forma pauperis, the "officers of the

3 court shall issue and serve all process." 28 U.S.C. 1915(d). The Court must appoint

4 the Marshal to effect service, see Fed. R. Civ. P. 4(c)(2), and the Marshal, upon order

5 of the Court, must serve the summons and the complaint, see Walker v. Sumner, 14

6 F.3d 1415, 1422 (9th Cir. 1994). Although a Plaintiff who is incarcerated and

7 proceeding in forma pauperis may rely on service by the Marshal, such Plaintiff "may

8 not remain silent and do nothing to effectuate such service"; rather, "[a]t a minimum,

9 a plaintiff should request service upon the appropriate defendant and attempt to

10 remedy any apparent defects of which [he] has knowledge." Rochon v. Dawson, 828

11 F.2d 1107, 1110 (5th Cir. 1987).

12 Here, Plaintiff's complaint has been pending for well over 120 days, and thus,

13 absent a showing of "good cause," is subject to dismissal without prejudice. See Fed.

14 R. Civ. P. 4(m). Plaintiff has not provided sufficient information to allow the Marshal

15 to locate and serve Sundaran, and consequently Plaintiff must remedy the situation or

16 face dismissal of his complaint without prejudice. See Walker v. Sumner, 14 F.3d at

17 1421-22 (holding prisoner failed to show cause why prison official should not be

18 dismissed under Rule 4(m) where prisoner failed to show he had provided Marshal

19 with sufficient information to effectuate service). Accordingly, the claims against

20 Sundaran will be dismissed without prejudice under Rule 4(m) unless Plaintiff either

21 himself effects service upon Sundaran, or provides the Court with an accurate current

22 location such that the Marshal is able to effect service upon him.

23

24 **CONCLUSION**

25 Plaintiff must either himself effect service on Defendant Sundaran, or provide

26 the Court with an accurate current location such that the Marshal is able to effect

27 service. If Plaintiff fails to effectuate service on Defendant Sundaran, or provide the

28 Court with an accurate current location and a first name or initial, for said Defendant,

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1   **within thirty (30) days** of the date this order is filed, Plaintiff's claims against said

2   Defendant will be dismissed without prejudice pursuant to Rule 4(m) of the Federal

3   Rules of Civil Procedure.

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5   IT IS SO ORDERED.

6   DATED: ___10/24/08_____

7   JEREMY FOGEL
                                                    United States District Judge

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